

Memorandum



City Attorney

DATE: November 25, 2003

TO: Mayor and Council

FROM: Marlene A. Pontrelli, City Attorney (Ext. 8120)

SUBJECT: Desert Subway v. City of Tempe

The Court has issued a preliminary injunction in the above matter, requiring that the City allow Subway to utilize its yellow and white exterior signs, to the extent the colors are part of Subway's trademark. This decision is in conflict with the City's current sign regulations. However, as part of the zoning code rewrite, the proposed new sign ordinance does not require that uniform colors be used, only that the signs are in conformity with an approved sign package. We believe that we have several grounds on which we can appeal the decision, and have placed on the December 4, 2003 Non-Consent Council Agenda, a request for authorization to appeal the Court's decision. However, in light of the proposed changes to the sign ordinance, we would like the opportunity to discuss with Council whether an appeal is necessary at this time.